



**A Publication of the
DEPARTMENT OF REGULATION AND LICENSING FOR
CEMETERY AUTHORITIES, CEMETERY SALESPERSONS AND PRENEED SELLERS
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Aftermath of Court of Appeals Decision

After the ruling of the Court of Appeals, District IV, that Service Corporation International (SCI) was in violation of Wisconsin's joint ownership law, the Funeral Directors Examining Board denied all of the applications for funeral establishment permits, submitted by SCI-owned funeral establishments. The applicants subsequently requested a hearing on each denial. The Board, with the assistance of Assistant Attorney General Bruce Olson, continued to negotiate with SCI and agreed to delay making a decision regarding the granting of hearings until October 31, 1999. SCI informed the Board that it was well along with negotiations with a potential purchaser of its cemeteries and the Board was willing to resolve the pending matters without causing undue disruption to funeral or cemetery businesses and consumers in Wisconsin.

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The Board and SCI stipulated that, no later than October 31, 1999, SCI and all SCI-affiliated companies shall sever any ownership and other operational interests in any and all cemeteries within the State of Wisconsin by selling such interests to an unrelated third party. Furthermore, if SCI completes the sale or disposition of its interests in any and all Wisconsin cemeteries by October 31, 1999, the funeral establishment permit for each of the SCI-affiliated funeral establishments will be promptly granted or renewed until May 31, 2001. If SCI has not completed the sale or disposition of its interests in any and all Wisconsin cemeteries by October 31, 1999, the funeral establishments that are owned by SCI or an SCI-affiliate company as of that date will surrender their existing permits, waive their right to appeal or hearing on the denial of their applications for new funeral establishment permits or renewal of existing permits, and will cease all operations, effective November 1, 1999. At the time of writing this article SCI was still negotiating with a potential buyer of its cemeteries and the deadline for additional action by the Board was rapidly approaching.

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The SCI-affiliated **funeral establishments** are:

Mothen-Bell & Sons Funeral Home (S. Milwaukee)
Pederson-Volker Funeral Chapel (Chippewa Falls)
Fuller-Speckien Funeral Home (Eau Claire)
Schramka Funeral Home (Cedarburg)
Schramka-Nero Funeral Home (Cudahy)
Schramka-Matenaer Funeral Home (Hartford)
Schramka Funeral Home (Menomonee Falls)
Schramka Funeral Home (Milwaukee)
Schramka Funeral Home (Milwaukee)
Schramka-Rembowski Funeral Home (St. Francis)
Schramka-Densow Funeral Home (Theinsville)
Steinhaus Funeral Home (Montello)
Steinhaus Funeral Home (Westfield)
Rosman-Uehling-Kinzer Funeral Home (Beloit)
F. J. Borgwardt Sons Funeral Home (Hales Corners)
F. J. Borgwardt Sons Funeral Home (Milwaukee)
John G. Borgwardt Funeral Home (West Allis)
Bruch Funeral Home (Kenosha)
Strouf-Kniewel Funeral Home (Racine)

The SCI-affiliated **cemeteries** are:

West Lawn Memorial Park (Racine)
Lake View Memorial Park (Oshkosh)
Appleton Highland Memorial Park, Inc. (Appleton)
Nicolet Memorial Gardens Association (Green Bay)

Even though 14 renewal applications were denied, the funeral establishments had the legal right to operate until the owners had exhausted all rights to due process.

Applicants for an original credential also have due process rights; however, they, generally, are not permitted to practice until a credential has been issued.

Legal Counsel's Opinion Regarding Funeral Directors Serving on Cemetery Board

Legal Counsel, Jacquelynn Rothstein, recently prepared a more formal opinion about some joint ownership issues which have been addressed in previous issues of the Regulatory Digest. Nothing has changed.

Ms. Rothstein stated that cemetery authorities are prohibited from having agents who have *any* ownership, operation, or other financial interest in a funeral establishment. In addition, the law prohibits an agent of a cemetery from *directly or indirectly* receiving or accepting any commission, fee, remuneration, or *benefit of any kind* from a funeral establishment, or from an owner, an employee, or an agent of a funeral establishment. Individuals who serve on the governing boards of cemeteries, including funeral directors, are considered agents of the cemetery. Because a funeral director has obvious ties to the operation of a funeral home and may well have ownership or other financial interests in a funeral

establishment, he or she would be prevented from serving on a cemetery board. Furthermore, a funeral director, acting as an agent of a cemetery, through a board position or otherwise, is similarly prevented from receiving or accepting, either directly or indirectly, any commission, fee, remuneration, or benefit of any kind from a funeral establishment, or from any owner, employee, or agent of a funeral establishment. Although a funeral director, acting in his or her capacity as an agent for a cemetery, may not be receiving direct benefits, it is important to note that "indirect" benefits and "benefits of any kind" are also prohibited. "Indirect benefits" and "benefits of any kind" may include intangibles as goodwill or business contacts. Accordingly, as long as such benefits inure to a funeral director, he or she is prevented from serving as an agent of a cemetery, regardless of whether he or she is receiving a direct form of payment or compensation.

Chapter 11 Bankruptcy By the Loewen Group

The Department of Regulation and Licensing has been carefully monitoring the reorganization of The Loewen Group, Inc., under Chapter 11. Department auditors are making unannounced survey audits of Loewen cemeteries and have been ascertaining that trust funds are being deposited and held, as required by Wisconsin law.

Meanwhile, the Loewen Group has assure the State of Wisconsin and other states that it will do the following:

- 1) Continue to comply with all state and provincial statutes and accompanying regulations that affect its business.
- 2) Fund pre-need trust accounts in accordance with state and provincial statutes and regulations.
- 3) Maintain the integrity of existing trust accounts and seek withdrawals from trusts pursuant to state and provincial regulations.
- 4) Continue to work with the state in addressing all compliance issues.

Funeral Directors Board's Position on Cemetery Law Changes

The Funeral Directors Examining Board advised Secretary Marlene Cummings that it could not support several changes to the cemetery laws which Secretary Cummings asked the Board to consider. The Board said it could not support the following proposals: 1) creation of a joint cemetery and funeral director's board; 2) a reduction in the trusting requirement for burial trusts from 100% to 40% and 3) the creation of an exception to the joint ownership law to permit an owner, employee or agent of a funeral establishment to be a director of a cemetery association or corporation or to assist a cemetery authority to locate burial spaces

and reserve them for purchase, provided that the owner, employee or agent of the funeral establishment does so without any fee or remuneration.

Regulation of Crematories

The Funeral Directors Examining Board anticipates receiving a proposal from Board member, Dan Densow, at the Board meeting on November 16, 1999. The Board would like to request a legislative draft sometime thereafter.

FTC Funeral Rule

The Federal Trade Commission has begun a review of its Trade Regulation Rule on Funeral Industry Practices. It has solicited comments on the overall costs, benefits and continuing need for the Funeral Rule. In addition, the Commission has sought comments on whether the rule should be modified to broaden its scope to include non-traditional providers of funeral goods or services, to revise and clarify the prohibition on casket handling fees, or to prohibit non-declinable funeral fees. The Funeral Directors Examining Board offered a very simple and straightforward suggestion: simply amend the definition of "funeral provider" so it means "any person, partnership or corporation that sells or offers to sell funeral goods or funeral services to the public." The definition now says "funeral goods *and* funeral services."

Sale of Cemeteries

The June 1999 and November 1998 editions of the Regulatory Digest listed the sales or encumbrances of cemeteries approved by the Department. The following approvals took place since November 1998:

Valhalla Memorial Park Association was approved to sell the assets of Valhalla Memorial Park Cemetery in Milwaukee to Valhalla Memorial Gardens, Inc. Dated: 4/14/99

Wisconsin Memorial Park, Inc., operator of Wisconsin Memorial Park Cemetery in Brookfield, was approved to sell all its outstanding shares of stock to S. E. South Central, Inc., a wholly-owned subsidiary of Stewart Enterprises, Inc. Dated: 4/28/99

The Fort Howard Cemetery Association, operator of the Fort Howard Cemetery & Chapel Mausoleum in Green Bay, was approved to sell all of the assets of the association to the Fort Howard Memorial Park, Inc., a wholly-owned subsidiary of The Tribute Companies, Inc. Dated: 6/17/99.

The Rest Haven Cemetery Association was approved to transfer ownership of the Rest Haven Garden Cemetery to the Town of Washington in Eau Claire County. Dated: 8/13/99.

Cemetery Task Force

The Cemetery Task Force has not held a meeting since April 23, 1999. The Department has requested the preparation of a bill draft by the Legislative Reference Bureau. The Department will call the Task Force back into session after a draft has been received.

Proposed Revisions of Cemetery Laws

Secretary Cummings has met with many groups and individuals to share ideas about the regulation of cemeteries. She is still working on a final draft of her proposed changes, but has floated the following ideas for discussion:

1. Create a Cemetery Board to provide more visibility for cemetery issues. The Board would consist of 7 members, 4 industry members (one representing for-profit cemeteries, one representing municipal cemeteries, one representing religious cemeteries and one representing not-for-profit cemeteries) and three public members.
2. The Funeral Directors Examining Board and the proposed new-created Cemetery Board should meet once or twice a year about issues affecting both of them and the consumer. These meetings should be open to the public.
3. Meet with funeral directors and try to obtain support for reducing the trusting percentage in their statutes. Amend the cemetery preneed trusting requirements, so that an amount equal to the "wholesale cost ratio" must be trusted. "Wholesale cost ratio" means the actual cost to a preneed seller to supply and deliver cemetery merchandise or to construct an undeveloped space divided by the price paid by the purchaser, excluding sales tax, finance or interest charges and insurance premiums.
4. Create the following subsection pertaining to maintenance and care. CARE AND MAINTENANCE OF EXISTING CEMETERY. A cemetery authority shall maintain each cemetery owned and operated by it in a reasonable condition which shall include leveling of the grounds where interments have been made, removal of all debris, mowing and edging, and maintenance of roadways and sidewalks.
5. Consider adding language at an appropriate place in Chapter 157 that a licensed cemetery shall state in its annual report the percentage of burial spaces that it still has available for sale.

6. Amend into the beginning of sec. 157.115 (1) (b) 1. the following language from the Florida Task Force proposal, relating to **neglected** cemeteries: “From the date of notice to the cemetery authority by due public notice as prescribed in s. [drafter, insert relevant statute] that the cemetery is not adequately maintained the owner shall have 90 days to correct the violation with the ability to request one 90-day extension to be granted upon good cause shown. Whenever, after said period, the unit of government in which the cemetery is located determines, according to this statute, after public hearing, that a cemetery, which has failed to be maintained for six months or has received three notices of neglected status, has become a neglected cemetery, it shall provide for the proper and seasonable cutting of all weeds and grass and removal of all debris and shall have unlimited access to perform the same. The local government may maintain an action against the cemetery authority to recover an amount equal to the value of such maintenance. Upon failure of the owner to pay the same, the local government may proceed to the circuit court for an Order of Abandonment in the same manner as that available in the case of an abandoned cemetery. However, the owner and the officers and directors of a corporate owner shall remain personally liable for said costs and no further burial may be issued therein.”
7. Require all cemeteries to deposit 15% of the cost of a burial space or a minimum of \$25 into a care fund. Eliminate current exemptions for municipal, religious and small non-profit cemeteries. **License** all larger cemeteries and **register** smaller cemeteries. (those that sell less than 10 burial spaces per year). Require annual reports of all licensed cemeteries and conduct routine audits of licensed cemeteries. Create authority to audit registered cemeteries, if circumstances warrant an audit. Do not permit licensed cemeteries to deposit care funds in an alternative investment (stocks and bonds) or in an account of a municipality. Continue to permit registered cemeteries to deposit care funds in an alternative investment.
8. Remove the exemption to the platting requirements in Chapter 157, relating to religious cemeteries. Inspect platting records as part of routine audits.
9. Create Section 157.09 SALES CONTRACTS.
 - 1) Notwithstanding the provisions in s. 440.92, relating to preneed sales contracts, a cemetery

authority and a purchaser shall execute a written contract for every sale of a grave space, cemetery merchandise, services or other merchandise sold by the cemetery authority. 2) The written contract shall state the sales price, the terms and other pertinent information relative to the transaction. Any additional purchases or deletions made by a purchaser more than 30 days subsequent to the original sale shall be shown on a separate contract. The written contract shall contain a full disclosure and itemization of each item or service purchased and a statement that a charge for opening and closing of a burial space is not included and will require an extra charge unless otherwise indicated. The contract shall conform to the Wisconsin Consumer Act, if the sale is for the sale will be financed as a retail installment contract.

10. Also authorize the department to promulgate rules creating minimum standards for records. Wherever appropriate, add language to allow the department to require an independent audit at the expense of a cemetery when the department has cause to believe that the cemetery may not be in compliance with the trusting requirements in this chapter and chapter 440, Subch. VIII.
11. Create a definition of “cemetery” to mean a place used or intended to be used for the final disposition of human remains. “Cemetery” does not include a location where the cremains of up to 10 people are kept, provided that the owner of the location does not charge a fee for keeping the cremains.
12. Also define “columbarium,” change “cemetery lot” to “burial space,” define “burial space” and define “lawn crypt.”
13. Repeal exemptions pertaining to care funds. Eliminate need for cemetery association to file annual reports with both the Department of Financial Institutions and the Department of Regulation and Licensing. Provide authority for audits, as described above. Require all cemetery associations to file with the Department of Financial Institutions and eliminate the exception for small cemeteries filing with the Register of Deeds.
14. Define “lawn crypt.” Include “lawn crypt” in the definition of “cemetery merchandise.” This will result in a need to trust money from the sale of a not-yet-constructed lawn crypt at an amount equivalent to the wholesale cost ratio.

15. Create the new provisions, relating to the contents of sales contracts.
16. Create new statutes that define “licensed cemetery” and “registered cemetery.” Require larger cemeteries (more than 10 sales of burial spaces per year) to be licensed and require smaller cemeteries (less than 10 sales of burial spaces per year) to be registered at a smaller fee. Also, require cemetery salespersons of licensed cemeteries to be licensed.
17. Eliminate duplicate filings and remove inconsistencies.
18. Change the statutes to require all **licensed** cemeteries or prospective purchasers of such cemeteries to obtain the Department’s approval and strengthen the Department’s authority as in #19-21.
19. Change the law, so it refers to the sale or transfer of ownership or control of any cemetery land. The definition of sale is the purchase of a controlling interest (50% or more) of assets or stock of an existing cemetery. “Ownership” refers to the individual or individuals who own the stock of the cemetery. Any one individual who owns 50% or more of the stock is considered an owner. When percentages of stock ownership change, anyone moving into a majority position shall be considered the new owner and, thus, subject to this paragraph. “Control” refers to the person or entity having 50% or more of the ownership, or having the right to sell the entity or its assets. A cemetery that has been sold shall submit an application for a new license under s. 440.91 (1) and a new registration under s. 440.92 (1), as applicable. Include a provision for the department to promulgate rules that prescribe what documentation must be submitted with a notification of a proposed sale, transfer or encumbrance.
20. Also, permit the Department to object to a sale or encumbrance of a cemetery, not just for financial solvency, but also if it determines that the cemetery officials are not competent to operate a cemetery. Competency shall be determined by requiring a designated official (officer, partner, member) of a licensed cemetery to pass an examination conducted by the Department. The exam shall contain questions relating to the cemetery and preneed sales laws in ch. 157 and 440, Subch. VIII, and the rules that relate to these chapters.
21. Require every applicant for **licensure** as a cemetery and every **currently-licensed** cemetery to designate a business representative (defined in s. 452.01 (3k)) who shall be primarily responsible for the cemetery’s compliance with Chapter 157 and 440, Subch. VIII. Require this person and any subsequent replacement to take an examination prepared by the Department, as described under s. 157.08 (1) (b), above. Every applicant for a cemetery **license** shall take and pass the exam before being eligible for a license.
22. Create (1m) to read: “The department may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of a certificate of registration, assess against a person who has done any of the things under sub. (2) (a) to (h) a forfeiture of not more than \$5,000 for each separate offense. Each day of continued violation constitutes a separate offense.”

Disciplinary Actions

ROBERT E. WAINSCOTT
SNELLVILLE GA
F/D/B/A LEDGEVIEW MEMORIAL PARK
CEMETERY, NEENAH WI
REPRIMAND/\$1,000 COSTS

Engaged in practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which demonstrated a lack of knowledge to apply professional principles or skills, and advertised in a manner that is false, deceptive or misleading. Effective 6/17/99. Secs. 440.92(2), 440.93(1)(c),(e), Stats. Case #LS9906171RLC.

Department of Regulation and Licensing
Cemetery Authorities, Salespersons & Preneed Sellers
P.O. Box 8935
Madison, WI 53708-8935

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Telephone Directory

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is:

(608) 266-5511

After dialing this number you are asked to press various extensions. For the following requests, please press numbers as noted:

Applications Forms	Press 11
Complaints Against Licensees	Press 12
Whether A Person is Licensed	Press 442
Application Processing & Requirements	Press 441

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@drl.state.wi.us

Copies of Regulatory Digest on the Web

See the Web site listed above.

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Code Relating to Cemetery Regulation can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November, 1998.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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